

118812

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-205233 **DATE:** June 22, 1982
MATTER OF: Hamco Management

DIGEST:

1. Protest against a solicitation provision restricting offers for office space to a central business area is dismissed as untimely because it was not filed before the closing date for receipt of offers.
2. Where protester learns that solicitation for office space will be restricted to the central business area and waits four months until entire procurement process has been completed and a contractor selected before seeking information from the agency justifying the CBA restrictions, the protester has not acted diligently and the protest is dismissed as untimely.
3. Protester, which offered office space located outside of the central business area in response to solicitation which limited offers to that area, is ineligible for award and is not an "interested party" for the purpose of challenging the contracting agency's evaluation of the awardee's offer.

Hamco Management, agent for Morton Trust, protests the award of a lease to Altman Brothers Company by the General Services Administration under solicitation for offers (SFO) No. GS-05B-13798 seeking office space for the Social Security Administration within the Central Business Area (CBA) of Lansing, Michigan. Prior to the solicitation, the Social Security Administration occupied space in a building leased from Hamco located outside the CBA.

Hamco protests both GSA's cost benefit analysis showing that relocation inside the CBA would not exceed the cost of a non-CBA location by more than 15 percent and

the validity of Executive Order 12072 establishing a preference for CBA locations. Hamco also challenges GSA's evaluation of the offer submitted by Altman Brothers, alleging that it does not comply with the terms of the solicitation.

We dismiss the protest.

As to the validity of Executive Order 12072 and the resulting limitation of offers to the CBA, Hamco's protest was received by this Office on October 20, 1981, more than four months after the date set for the receipt of offers despite the fact that the solicitation clearly limited consideration to space located within the CBA. Moreover, the record shows that GSA published notice of its intent to lease space in the CBA on April 30 and that GSA met with Hamco's representatives on May 11 to personally explain its intent to relocate the Social Security Administration to the CBA and the reasons why relocation was necessary.

Our Bid Protest Procedures, 4 C.F.R. § 21.2(b)(1) (1981), require that protests based upon alleged solicitation improprieties which are apparent before the closing date for receipt of offers must be filed before that date. CMI Corporation, B-206349, March 8, 1982, 82-1 CPD 212. Consequently, Hamco's protest against the validity of the CBA preference filed with this Office after the closing date is clearly untimely and will not be considered on the merits.

With respect to the accuracy of GSA's cost benefit analysis which supported its determination to relocate the Social Security Administration to the CBA, Hamco was aware of GSA's determination by May 11, 1981 at the latest. Hamco took no action at that time to question the determination; instead, it waited until the procurement had been completed and another firm selected before seeking GSA's cost benefit analysis through its Freedom of Information Act request of September 8. It is incumbent upon a potential protester to diligently seek whatever additional information is needed to determine whether a basis for protest exists. National Council of Senior Citizens, Inc., B-196723, February 1, 1980, 80-1 CPD 87. The information necessary to protest may be sought through a debriefing,

through investigatory efforts, or, as here, through a Freedom of Information Act request. Policy Research Incorporated, B-200386, March 5, 1981, 81-1 CPD 172. In no case, however, may a potential protester sit idly by and decide later to seek information that could have been obtained earlier and then expect to file a protest based on that information. Policy Research Incorporated, supra. In the absence of any plausible explanation from the protester, we can only conclude that Hamco did not diligently pursue the matter when it could have and is not entitled to have the issue considered. See Graphics, Communications Systems, Inc., B-186715, July 23, 1976, 76-2 CPD 75.

Finally, because Hamco failed to offer space within the CBA it is ineligible for award under the terms of the solicitation. Since Altman Brothers was not the only acceptable offeror under the solicitation, Hamco is not an "interested party" within the context of our Bid Protest Procedures, 4 C.F.R. § 21.1(a) (1981), to challenge the contracting officer's evaluation of Altman Brother's offer. Policy Research Incorporated, supra.

The protest is dismissed.

Harry R. Van Cleve

Harry R. Van Cleve
Acting General Counsel